

Notice  
of Rulemaking Hearing  
Tennessee Ethics Commission  
Chapter 0580-1-4  
Rules Pertaining to Administrative Sanctions

The Tennessee Ethics Commission will hold a public hearing to receive comments concerning new rules, pursuant to T.C.A. § 3-6-107(1). This hearing will be conducted as prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-201 et seq., and will take place in the State Library and Archives Building, Capitol Blvd., Nashville, Tennessee, at \_\_\_\_ a.m. CDT on \_\_\_\_\_, 2007.

Written comments will be considered if received by close of business, \_\_\_\_\_, 2007, at the office of the Tennessee Ethics Commission, 201 4<sup>th</sup> Ave. N, Suite 1820, Nashville, TN 37248; 615-253-8634.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Ethics Commission, 201 4<sup>th</sup> Ave. N, Suite 1820, Nashville, TN 37248, 615-253-8634, to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, by telephone, or other means, and should be made no less than ten (10) days prior to \_\_\_\_\_, 2007 or the date such party intends to review such filings, to allow time to provide such aid or service. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Complete copies of the text of the notice may be downloaded from the web at <http://state.tn.us/sos/tec/index.htm>, or may be obtained by contacting Anne F. Turner, Tennessee Ethics Commission, 615-253-2665, 201 4<sup>th</sup> Ave. N, Suite 1820, Nashville, TN 37248.

*This updated draft contains changes suggested by the Commissioners at their September 27, 2007 meeting, as well as changes suggested by individual Commissioners following the meeting.*

Substance of Proposed Rules  
of  
The Tennessee Ethics Commission  
  
Chapter 0580-1-4  
Rules Pertaining To Administrative Sanctions  
  
New Rules  
  
Table of Contents

0580-1-4-.01 Purpose and Scope  
0580-1-4-.02 Definitions

0580-1-4-.03 Violations of T.C.A. §§ 2-10-122 through 129,  
8-50-501 through 506  
0580-1-4-.04 Violations of T.C.A. §§ 3-6-301 through 3-6-307

**0580-1-4-.01 PURPOSE AND SCOPE.**

- (1) These rules are promulgated for the purpose of providing procedures for the conduct of hearings and assessment of administrative sanctions for violations of Title 2, Chapter 10, Parts 122 through 129, Title 3, Chapter 6, Part 3, and Title 8, Chapter 50, Parts 501 through 506 of the Tennessee Code Annotated. When the Commission is considering issuing civil penalties or other administrative sanctions as a result of a complaint, the notice and hearing procedures set forth in the Rules of the Tennessee Ethics Commission, Chapter 0580-1-3, Rules Pertaining to Complaint Proceedings, shall be followed instead of these Rules 0580-1-4.

**Authority:** T.C.A. §§ 2-10-122 through 2-10-129; 3-6-105 through 3-6-107; 3-6-205 through 3-6-206; 3-6-301 through 3-6-308; 8-50-501 through 506.

**0580-1-4-.02 DEFINITIONS.**

- (1) Commission. The Tennessee Ethics Commission.

- (2) Executive Director. The Executive Director of the Tennessee Ethics Commission.
- (3) Executive Staff. A staff person or employee of the executive branch of Tennessee state government, except those persons who hold any office or position enumerated in T.C.A. § 8-50-501(a).

~~(4) General Counsel. The Commission's senior staff attorney.~~

- ~~(5) Legislative Staff. A staff person or employee of the legislative branch of Tennessee state government, except those persons who hold any office or position enumerated in T.C.A. § 8-50-501(a).~~

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*Authority:* T.C.A. §§ 3-6-107; 3-6-306(a)(3)(B).

**0580-1-4-.03 VIOLATIONS OF T.C.A. §§ 2-10-122 THROUGH 129 AND T.C.A. §§ 8-50-501 THROUGH 506.**

- (1) When the Commission's General Counsel or designee determines that an individual or entity within the jurisdiction of the Commission has committed a violation of Title 2, Chapter 10, Part 1, or Title 8, Chapter 50, Part 5, of the Tennessee Code Annotated, the Executive Director shall provide notice by personal service, by certified mail, return receipt requested, or by other mail service which provides verification of delivery, that informs the alleged violator of the:
  - (a) Specific allegations, including citation to the specific law or rules violated;
  - (b) Maximum administrative sanctions possible, including citation to the specific law or rules authorizing the sanction;
  - (c) Date, time and location of the meeting in which the Commission will consider the imposition of such administrative sanctions; and
  - (d) The opportunity to choose, in writing at least thirty (30) days before the scheduled hearing, one (1) of the following options:
    - 1. Appear personally or through an attorney to present oral testimony and any documents that the party wishes the Commission to consider; or
    - 2. Appear by sworn, notarized statement, including any pertinent exhibits which the party wishes the Commission to consider.
  - (e) If a party does not timely choose one of the foregoing, the party shall be deemed to have waived the right to present oral or written testimony and exhibits.
- (2) Notwithstanding the provisions of paragraph (1), above, and individual or entity accused of a violation of T.C.A. Title 3, Chapter 6, Part 3 of the Tennessee Code Annotated, in addition to being accused of a violation of Title 2, Chapter 10, Part 1, or Title 8, Chapter 50, Part 5, shall be provided a contested case hearing in accordance with the procedures set forth in the following section 0580-1-4-.04; provided, however, executive staff and legislative staff accused of violating any law or rule within the jurisdiction of the Commission shall be provided the informal hearing in accordance with the procedures set forth in this section 0580-1-4-.03.
- (3) The informal hearing referenced in this section shall not be required to be held pursuant to the contested case provisions of T.C.A. § 4-5-301 et seq.
- ~~(4) The Commission shall provide for a court reporter to transcribe the hearing. Any party may obtain a written transcript of the proceeding directly from such court reporter at the party's own expense.~~
- ~~(5) If the party intends to appear and present oral testimony at the hearing (with or without counsel), the documents that the party intends to submit must be filed with the Commission office, marked as the party's~~

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exhibits, at least twenty (20) days before the hearing.

- | (6) A party wishing to appear by sworn notarized statement must submit the statement and any accompanying documentation to the Commission office at least twenty (20) days before the hearing. Formatted: Bullets and Numbering
  
- | (7) At the hearing, if a party has chosen to appear personally or through an attorney, any individual Commission member or the Commission's General Counsel or designee may question the individual presenting oral or written evidence. Formatted: Bullets and Numbering
  
- | (8) The Commission may limit the presentation of the oral testimony or the admission of exhibits if the Commission determines such evidence to be duplicative of evidence already submitted, irrelevant to the factual or legal questions pending before the Commission, or that the Commission otherwise determines should not be admitted into evidence. In determining whether or not a violation has occurred, the Commission may rely upon the Tennessee Rules of Civil Procedure or the Tennessee Rules of Evidence, but shall not be bound by such Rules of Civil Procedure or Rules of Evidence. Formatted: Bullets and Numbering  
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- | (9) The Commission may, on its own motion, or at the request of the alleged violator, issue subpoenas and assess fees related thereto in accordance with the provisions of T.C.A. §§ 3-6-204(a) and 3-6-107(2). Such subpoenas shall be issued through the Executive Director or designee in the form and manner in which subpoenas are issued by clerks of court under the Tennessee Rules of Civil Procedure. Service may be by certified mail, in addition to the means of service provided by the Tennessee Rules of Civil Procedure. Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided by law or by action of the Commission. The party requesting the subpoenas shall bear the cost of paying the fees to the witnesses subpoenaed. Formatted: Bullets and Numbering
  
- | (10) After the Commission has concluded the hearing, a majority vote of the entire Commission shall determine, based upon a preponderance of the evidence, whether a violation of any law or rule within the jurisdiction of the Commission has occurred and, if so, the appropriate civil penalty or administrative sanction to be imposed. Formatted: Bullets and Numbering
  - (a) If an executive staff person or a legislative staff person is found by the Commission to have violated any provision of T.C.A. Title 3, Chapter 6, Part 3, the Commission shall not issue an order assessing civil penalties, but shall instead refer its findings to the staff person's appointing authority.
  - (b) The Commission may, if it deems appropriate to do so, set a separate hearing for the consideration of appropriate civil penalties or other administrative sanctions.
  
- | (11) In assessing civil penalties, the following factors may be considered: Formatted: Bullets and Numbering
  - (a) Whether the amount imposed will be a substantial economic deterrent to the violator.
  - (b) Whether the violator has previously committed violations.
  - (c) The circumstances leading to the violation.
  - (d) The severity of the violation and the risk of harm to the integrity of the processes of government.
  - (e) The economic benefits gained by the violator as a result of non-compliance.
  - (f) The interest of the public.
  
- | (12) Commission orders shall be signed by the Commissioner who conducted the hearing, and each Commissioner shall additionally indicate by mark whether the individual voted with the majority. Commission staff shall provide copies of the signed order to all parties. Deleted: 1
  
- | (13) The order shall include notice to the individual named in the order that: Deleted: 2

- (a) A request for reconsideration of the order may be submitted in writing to the Commission within fourteen (14) days from the date of the issuance of the order.
  - (i) Such written request must include additional information that was not available for the Commission's consideration at the meeting in which the order was issued.
  - (ii) Written requests for reconsideration which fail to include the additional information referenced in paragraph (i) above will be dismissed without further consideration by the Commission.
- (b) The order may be appealed within thirty (30) days from the date of the issuance of the order pursuant to the procedures provided for under the Uniform Administrative Procedures Act, T.C.A. §4-5-301, *et seq.* If the Commission's order is not appealed within thirty (30) days of its issuance, the order becomes a final order.
- (c) If the order assesses civil penalties, such penalties must be paid in full to the Commission within thirty (30) days from the date of the issuance of the order unless a request for reconsideration or appeal is submitted pursuant to subparagraphs (a) and (b) above.

| (14) -- The Chair of the Commission or the Executive Director shall have the authority to issue the order on behalf of the Commission, and Commission staff shall serve the order by personal service, by certified mail, return receipt requested, or by other mail service which provides verification of delivery.

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| (15) -- Requests for Reconsideration. While a request for reconsideration of an order is pending, the order shall not become final. Upon an affirmative Commission vote denying a request for reconsideration, an order shall be issued which denies the request and allows the individual or authorized representative named in the order ten (10) days after the date of the issuance of the order to appeal the original assessment order under the Tennessee Administrative Procedures Act. If not appealed the order becomes a final order.

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| (16) -- If an order assessing monetary sanctions becomes final without the individual or entity named in the order taking action to request reconsideration, appeal or to pay in full the amount assessed, upon the order becoming final, Commission staff shall forward the matter to the Office of the Attorney General & Reporter for collection and other appropriate legal action pursuant to T.C.A. § 3-6-206 and other applicable law.

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**Authority:** T.C.A. §§ 2-10-122 through 129; 3-6-105; 3-6-107; 3-6-110; 3-6-205 through 206; 8-50-501 through 506; and 4-5-301, *et seq.*

#### **0580-1-4-.04 VIOLATIONS OF T.C.A. §§ 3-6-301 THROUGH 307.**

- (1) When the Commission's General Counsel or designee determines that a lobbyist, employer of a lobbyist, or an official listed in T.C.A. § 8-50-501 who is subject to the provisions of T.C.A. Title 3, Chapter 6, Part 3 of the Tennessee Code Annotated, has violated such Part, the Executive Director shall provide notice by personal service, by certified mail, return receipt requested, or by other mail service which provides verification of delivery, that informs the alleged violator of the:
  - (a) Specific allegations, including citation to the specific law or rules violated;
  - (b) Maximum administrative sanctions possible, including citation to the specific law or rules authorizing the sanction; and
  - (c) The right to request a contested case hearing, and the available dates and times of such hearing.

| (2) The contested case hearing shall be conducted by an Administrative Law Judge assigned by the office of the Secretary of State in the presence of a minimum of four (4) Commission members, pursuant to the provisions of the Administrative Procedures Act in Title 4, Chapter 5, Part 3, of the Tennessee Code Annotated. The Commission shall provide for a court reporter to transcribe the hearing, and Commission staff shall otherwise provide for a record of the proceedings to be maintained as required by T.C.A. § 4-5-

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319. Notwithstanding any provisions to the contrary contained in the Rules of the Tennessee Ethics Commission, Chapter 0580-1-2, Access to Public Records of the Tennessee Ethics Commission, any party may obtain a written transcript of the proceeding directly from the court reporter at the party's own expense.

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(3) A party may be represented by counsel. The Commission shall be represented by its General Counsel or designee.

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(4) The Commission may, on its own motion, or at the request of the alleged violator, issue subpoenas and assess fees related thereto in accordance with the provisions of T.C.A. §§ 3-6-204(a) and 3-6-107(2). Such subpoenas shall be issued through the Executive Director or designee in the form and manner in which subpoenas are issued by clerks of court under the Tennessee Rules of Civil Procedure. Service may be by certified mail, in addition to the means of service provided by the Tennessee Rules of Civil Procedure. Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided by law or by action of the Commission. The party requesting the subpoenas shall bear the cost of paying the fees to the witnesses subpoenaed.

(5) After the Commission has concluded the hearing, a majority vote of the entire Commission shall determine, based upon a preponderance of the evidence, whether a violation of any law or rule within the jurisdiction of the Commission has occurred and, if so, the appropriate civil penalty or administrative sanction to be imposed; provided, however, the Commission may, if it deems appropriate to do so, set a separate hearing for the consideration of appropriate civil penalties or other administrative sanctions.

(6) In assessing civil penalties or other administrative sanction, the following factors may be considered:

- (a) Whether the amount imposed will be a substantial economic deterrent to the violator.
- (b) Whether the violator has previously committed violations.
- (c) The circumstances leading to the violation.
- (d) The severity of the violation and the risk of harm to the integrity of the processes of government.
- (e) The economic benefits gained by the violator as a result of non-compliance.
- (f) The interest of the public.

(7) The Commission's ruling shall be in the form of an order of the Commission, which shall include:

- (a) Findings of fact and conclusions of law for all aspects of the order and reference to any testimony and exhibits, admitted into evidence at the hearing, on which the respective findings are based; and
- (b) Notice of the date upon which the order becomes final and the time limits for seeking judicial review of the final order pursuant to T.C.A. § 3-6-204(b); provided, however, that if the Commission stays its finding on the assessment of civil penalties or other administrative sanctions pursuant to paragraph (6), above, the order shall be designated an initial order and shall include:
  - i. The date, time and location of the hearing at which the Commission shall consider what sanctions, if any, to impose;
  - ii. The violator's right to submit to the Commission, within fifteen (15) business days after entry of the initial order, any written documentation the violator wishes the Commission to consider when determining what, if any, administrative sanctions to impose on the violator;
  - iii. A statement of any circumstances under which the initial order may, without further notice, become a final order.

- iv. The fact that the initial order is an interim order and that the time for filing a petition for review pursuant to T.C.A. § 3-6-204(b) has not commenced.
- (10) The Commission or Administrative Law Judge shall designate the party responsible for preparing an order. Commission orders shall be signed by the Chair of the Commission, or by his/her designee who attended the contested hearing in the absence or inability of the Chair to act. The Commission's General Counsel or designee shall file the order with the Administrative Procedures Division in the Office of the Secretary of State within five (5) business days following signature by the appropriate Commissioner. The Commission staff shall provide copies of the signed order to all parties.

**Authority:** T.C.A. §§ 4-5-301 et seq.; T.C.A. §§ 3-6-105; 3-6-107; 3-6-110; 3-6-301 through 3-6-308.

Legal contact and/or party who will approve final copy for publication:

Bruce A. Androphy, Executive Director  
Tennessee Ethics Commission  
SunTrust Bank Bldg  
201 4<sup>th</sup> Ave N, Suite 1820  
Nashville, TN 37219  
(615) 253-8634

Contact for disk acquisition:

Anne F. Turner, General Counsel  
Tennessee Ethics Commission  
SunTrust Bank Bldg  
201 4<sup>th</sup> Ave N, Suite 1820  
Nashville, TN 37219  
(615) 253-8634

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

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Anne F. Turner, General Counsel

The roll-call vote by the Tennessee Ethics Commission on these rulemaking hearing rules was as follows:

	Aye	No	Absent
Thomas J. Garland (Chairman)	—	—	—
R. Larry Brown	—	—	—
Donald J. Hall	—	—	—
Linda W. Knight	—	—	—
Dianne Neal	—	—	—
Benjamin S. Purser, Jr.	—	—	—

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Ethics Commission on the \_\_\_\_ day of \_\_\_\_\_, 2007.

Further, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the \_\_\_\_\_, 2007 and such notice of rulemaking hearing having been published in the \_\_\_\_\_, 2007\_ issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Bruce A. Androphy, Executive Director

Subscribed and sworn to before me this the \_\_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
Notary Public

My commission expires on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Robert E. Cooper, Jr.  
Attorney General & Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of state on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and will become effective on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

By:\_\_\_\_\_